

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4168 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No

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MAHENDRAKUMAR SANTRAMBHAI SOLANKI

Versus

DISTRICT JUDGE, KHEDA

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Appearance:

MR BA VAISHNAV for Petitioner

MR VB GARANIA, AGP for Respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 24/12/97

ORAL JUDGEMENT

Both the learned counsel submit that the question involved in this petition is exactly identical to the one decided by this Court in the decision dated 7.9.1993 in Special Civil Application No. 9130 of 1993 reported in 1995(1) GLH Pg.584 [S.G.Rathod Vs. District Judge, Bhavnagar]. It is submitted by both the sides that the matter may be decided accordingly.

There is no dispute that certain posts of Bailiffs were advertised by the District Judge, Nadiad. In the interviews held for the purpose of selecting the candidates in pursuance to this advertisement the

petitioner was placed at sr.no.9 and he was intimated on 17.2.1988. The petitioner's date of birth being 9.1.1965 he was 23 years of age at the time when he was recruited and included in the select list. The candidate who was at Sr.No.8 in this select list had been appointed on 1.3.1990, but despite the availability of the vacancies the petitioner was not given appointment on the ground that he had crossed upper age limit and it is the further case of the petitioner that a fresh advertisement was issued on 16.10.1991 in respect of the post of bailiffs. The petitioner made representation on 30.1.1993 and again on 29.9.1993 because the candidates who were placed at lower position in the select list i.e. at sr.nos. 10 and 11 viz. Salambhai Parmar and Ambalal Talpada were appointed on 19.3.1994. At this time the appointment was denied to the petitioner on the ground that he had crossed the upper age limit of 25 years. The petitioner's grievance is that at the time of the initiation of the process of recruitment when he was placed in the select list his age was of 23 years and he was within the age limit. Even otherwise the petitioner claims to be socially and economically backward candidate and is entitled to relaxation of the age for a period of five years as per government notification which has been placed on record. The aforesaid factual submissions are not disputed by the otherside. It has been clearly held in the case of S.G.Rathod Vs. District Judge, Bhavnagar (Supra) that the appointment cannot be denied to a selected candidate if he was within the age limit at the time of application and selection on the ground of crossing the age limit because such candidates stand recruited for appointment at the time when the select list is prepared and the appointment has to be given to them as and when vacancies against which they are selected are filled up and the appointments have to be made in accordance with the merit position assigned to them in the select list.

In view of the law laid down in the case of S.G.Rathod Vs. District Judge, Bhavnagar (Supra) I find that the petitioner is entitled for appointment according to his merit position in the select list notwithstanding the fact that he had crossed the age limit when the candidates at position lower than him were appointed in the year 1994 and accordingly the respondents are directed to consider the petitioner's candidature for appointment as Bailiff from the date the candidates at sr.nos. 10 and 11 in the select list of 1988 were appointed and it is further ordered that the petitioner shall be entitled to all consequential benefits except the salary for the period prior to the date of

appointment. The appointment of the petitioner shall be made at the earliest possible opportunity but it will be effective from 1.1.1998 for the purpose of salary etc. and his pay shall be notionally fixed as if he had been appointed in the year 1994 when the candidates at sr.nos. 10 and 11 were appointed. This Special Civil Application is accordingly allowed and the rule is also made absolute in the terms as aforesaid. No order as to costs.

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m.m.bhatt